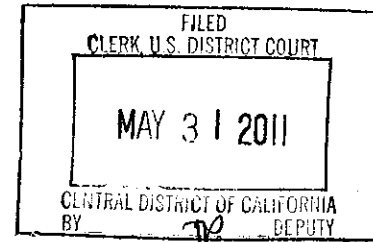


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***Proposed Lead and Local Counsel for Movant
Allan Lyons and the Class***

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AWAAZ BAKSH, Individually and
On Behalf of All Others Similarly
Situating,
Plaintiff,
vs.
NIVS INTELLIMEDIA
TECHNOLOGY GROUP, INC., et
al.,
Defendants.

Case No. 2:11-CV-2647-R-JCG

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
ALLAN LYONS' MOTION FOR: (1)
CONSOLIDATION; (2)
APPOINTMENT OF LEAD
PLAINTIFF; AND (3) APPROVAL
OF LEAD AND LOCAL COUNSEL**

1 GAIL KWOK, Individually and On
2 Behalf of All Others Similarly
Situating,

3 Plaintiff,

4 vs.

5 NIVS INTELLIMEDIA
6 TECHNOLOGY GROUP, INC., et
al.,

7 Defendants.

Case No. 2:11-CV-2716-R-JCG

CLASS ACTION

8
9 IRA F/B/O/ EDWARD FRITSCHER,
Individually and On Behalf of All
Others Similarly Situated,

10 Plaintiff,

11 vs.

12 NIVS INTELLIMEDIA
13 TECHNOLOGY GROUP, INC., et
14 al.,

15 Defendants.

Case No. 2:11-CV-3004-R-JCG

CLASS ACTION

16 ALI ARAR, Individually and On
Behalf of All Others Similarly
Situating,

17 Plaintiff,

18 vs.

19 NIVS INTELLIMEDIA
20 TECHNOLOGY GROUP, INC., et
21 al.,

22 Defendants.

Case No. 2:11-CV-3857-R-JCG

CLASS ACTION

Date: July 5, 2011

Time: 10:00 AM

Courtroom: 8

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26 v

27 CASE NO. 2:11-CV-2647
28 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ALLAN LYONS'
MOTION FOR: (1) CONSOLIDATION, (2) APPOINTMENT OF LEAD PLAINTIFF, AND
(3) APPROVAL OF LEAD AND LOCAL COUNSEL

I. INTRODUCTION

Class member Allan Lyons (“Lyons” or “Movant”) respectfully submits this Memorandum of Points and Authorities in support of his motion for: (1) consolidation, (2) appointment as Lead Plaintiff in the above-referenced action pursuant to Section 21D of the Securities Exchange Act of 1934 (the “Exchange Act”), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), 15 U.S.C. § 78u-4, and (3) approval of his selection of the law firms of Saxena White P.A. (“Saxena White”) as Lead Counsel and Glancy Binkow & Goldberg LLP (“GB&G”) as Local Counsel, pursuant to the PSLRA.

Movant, as set forth in the accompanying certification¹ incorporated by reference herein, purchased securities of NIVS IntelliMedia Technology Group, Inc. (“IntelliMedia”) between March 24, 2010 and March 25, 2011, inclusive (the “Class Period”), at prices artificially inflated as a result of Defendants’ violations of the federal securities laws. As demonstrated herein, Movant incurred substantial losses² in connection with his transactions in IntelliMedia securities during the Class Period, and he will fairly and adequately represent the Class in his prosecution of this litigation.

II. PRELIMINARY STATEMENT

On March 29, 2011, Awaaz Baksh (“Baksh”) commenced a securities class action in the U.S. District Court in the Central District of California, captioned *Baksh v. NIVS IntelliMedia Technology Group, Inc., et al*, Case No. 2:11-cv-2647 (the “Baksh Action”), on behalf of all persons who purchased or otherwise

¹ Movant’s transactions in IntelliMedia securities during the Class Period are set forth in Mr. Lyons Certification, which is attached as Exhibit B to the Declaration of Michael Goldberg (the “Goldberg Decl.”).

² A chart setting forth Movant’s losses is attached as Exhibit C to the Goldberg Decl.

1 acquired IntelliMedia securities during the Class Period, and against IntelliMedia
2 and certain officers or directors of the Company (the "Individual Defendants" and,
3 collectively, "Defendants") for violations of Sections 10(b) and 20(a) of the
4 Exchange Act, as amended by the PSLRA, and Rule 10b-5 promulgated
5 thereunder.

6 Subsequently, three similar actions were filed in the U.S. District Court in
7 the Central District of California: (i) *Gail Kwok v. NIVS IntelliMedia Technology*
8 *Group, Inc., et al.*, Case No. 2:11-cv-2716 (Filed on March 31, 2011); (ii) *IRA*
9 *F/B/O/ Edward Fritsche v. NIVS IntelliMedia Technology Group, Inc., et al.*, Case
10 No. 2:11-cv-3004 (Filed on April 8, 2011); and, (iii) *Ali Arar v. NIVS IntelliMedia*
11 *Technology Group, Inc., et al.*, Case No. 2:11-cv-3857 (Filed on May 4, 2011).
12 These actions alleged the same or similar allegations against the Defendants during
13 the Class Period as the *Baksh* Action. In addition, the *Fritsche* action contained
14 allegations brought pursuant to the Securities Act of 1933.

15 On April 8, 2011, Baksh published a notice to class members on *Globe*
16 *Newswire*, as required by the PSLRA (the "Notice"). The Notice advised those
17 who purchased or otherwise acquired IntelliMedia common stock during the Class
18 Period of the existence of a lawsuit against the Defendants and that Defendants
19 allegedly failed to disclose that: (1) the Company had inaccurately recorded certain
20 transactions; (2) there were discrepancies in the Company's accounts receivables;
21 (3) the Company was engaged in improper acts involving the Company's
22 accounting records and bank statements; (4) as a result, the Company's financial
23 results were not prepared in accordance with Generally Accepted Accounting
24 Principles; (5) the Company lacked adequate controls; and (6) as a result of the
25 foregoing, the Company's financial results were false and misleading at all
26 relevant times. The Notice further advised class members of their right to move the

1 Court to be appointed Lead Plaintiff within 60 days of the date of publication of
2 the Notice, or by May 31, 2011.³

3 Pursuant to the PSLRA, this Court should appoint as Lead Plaintiff the
4 movant or group of movants that has demonstrated the "largest financial interest in
5 the litigation" and also meet the typicality and adequacy prongs of Fed. R. Civ. P.
6 23. *See* 15 U.S.C. 78u-4(a)(3)(B)(iii). Mr. Lyons suffered estimated losses of
7 \$1,305,275.54. To the best of his knowledge, Movant's losses represent the largest
8 known financial interest of any Class member seeking to be appointed as lead
9 plaintiff. Movant is not aware of any other class member that has filed an action or
10 filed an application for appointment as lead plaintiff that has sustained greater
11 financial losses. In addition, Movant satisfies each of the requirements of the
12 PSLRA and Rule 23 of the Federal Rules of Civil Procedure ("Rule 23") and,
13 therefore, is qualified for appointment as Lead Plaintiff in the Action. Thus, as
14 demonstrated herein, Movant is the presumptive "most adequate plaintiff" and
15 should be appointed Lead Plaintiff.

16 **III. STATEMENT OF FACTS**⁴

17 IntelliMedia is a corporation incorporated under the laws of Delaware, with
18 executive offices located at NIVS Industry Park, No. 29-31; Shuikou Road,
19 Huizhou, Guangdong, People's Republic of China, 516006. ¶12. IntelliMedia is
20 engaged in the design, manufacture, marketing, and sale of consumer electronic

21 ³ The Notice incorrectly stated that the deadline to move for appointment as Lead
22 Plaintiff was May 30th, 2011, but as May 30th is Memorial Day, a Court Observed
23 Holiday, the lead plaintiff deadline is actually the following day on May 31, 2011.
24 A true and correct copy of the Notice is attached to the Goldberg Decl. as Exhibit
25 A.

26 ⁴ These facts were derived from the allegations contained in the class action styled
27 as *IRA F/B/O/ Edward Fritsche v. NIVS IntelliMedia Technology Group, Inc.*, Case
28 No. 2:11-cv-3004 (Filed on April 8, 2011), filed by the law firm of Saxena White,
P.A.

1 products. These products consist mainly of audio and video products, digital audio
2 systems, televisions, digital video broadcasting set-top boxes, DVD players, and
3 audio/video peripheral and accessory products. ¶61. IntelliMedia was also granted
4 a license to manufacture mobile phones in September 2009 by the Ministry of
5 Industry and Information Technology in China. The Company's phones come
6 equipped with e-mail, multimedia messaging, touchscreen, and PDA functionality.
7 ¶65. IntelliMedia distributes its products through a well-established network of
8 distributors and resellers, which allows the Company to penetrate customer
9 markets worldwide. ¶69.

10 The *Fritsche* complaint alleges that Defendants are strictly liable, pursuant
11 to the Securities Act of 1933, for material misstatements in the Offering
12 Documents for the secondary public stock offering (the "SPO") that took place on
13 or around April 20, 2010. ¶2. The SPO provided net aggregate proceeds to the
14 Company of approximately \$21.9 million, after deduction of underwriting
15 discounts and commissions payable by the Company. ¶26. The *Fritsche*
16 complaint alleges that the statements in the Offering Documents were materially
17 false and failed to disclose: (1) the extent of the accounting fraud and irregularities
18 present in the Company's financial statements and SEC filings; (2) that as a result,
19 the Company's financial results were materially inflated at all relevant times; (3)
20 that the Company's financial statements were not prepared in accordance with
21 Generally Accepted Accounting Principles ("GAAP"); and (4) that the Company
22 lacked adequate internal and financial controls. ¶29.

23 The *Fritsche* complaint also alleges that Defendants' statements and filings
24 during the Class Period were materially false and misleading pursuant to the
25 Securities Exchange Act of 1934, because they failed to disclose and
26 misrepresented: (1) that the Company had inaccurately recorded certain

1 transactions disclosed to investors in public filings; (2) that the Company's
2 accounts receivable figures were inaccurate and inconsistent; (3) that the Company
3 had engaged in illegal activities in regards to IntelliMedia's bank statements and
4 accounting records; (4) that the Company lacked adequate and necessary internal
5 controls, and as a result multiple accounting and financial irregularities had
6 occurred; (5) that the Company's financial results were not prepared in accordance
7 with GAAP; and, (6) as a result the Company's financial statements were false and
8 misleading at all relevant times. ¶86.

9 **IV. ARGUMENT**

10 As discussed below, the Court should consolidate the above-captioned
11 related actions (the "Related Actions") given the similarity of the actions, and to
12 ensure orderly prosecution of claims brought against Defendants. Moreover,
13 Lyons satisfies each of the three requirements set forth in the PSLRA and is
14 qualified for appointment as Lead Plaintiff for the Class. Lastly, Movant also
15 seeks approval by this Court of his selections of Lead and Local Counsel for the
16 Class.

17 **A. The Court Should Consolidate the Related Actions**

18 Movant seeks consolidation of the following related securities class actions
19 filed in this Court:

<u>Case Name</u>	<u>Case No.</u>	<u>Filing Date</u>
<i>Awaaz Baksh v. NIVS IntelliMedia Tech. Group, Inc., et al.</i>	2:11-cv-2647	3/29/2011
<i>Gail Kwok v. NIVS IntelliMedia Tech. Group, Inc. et al.</i>	2:11-cv-2716	3/31/2011
<i>IRA F/B/O/ Edward Fritsche v. NIVS IntelliMedia Tech. Group, Inc., et al.</i>	2:11-cv-3004	4/8/2011
<i>Ali Arar v. NIVS IntelliMedia Tech. Group, Inc. et al.</i>	2:11-cv-3857	5/4/2011

1 To Movant's knowledge, there are no other class actions brought pursuant to
2 the federal securities laws (other than those listed above) against Defendants
3 pending in this Court.

4 The consolidation of actions in federal court is governed by Rule 42 of the
5 Federal Rules of Civil Procedure, which provides:

6 When actions involving a common question of law or fact are pending
7 before the court, it may order a joint hearing or trial of any or all the
8 matters in issue in the actions; it may order all the actions
consolidated; and it may make such orders concerning proceedings
therein as may tend to avoid unnecessary costs or delay.

9 Fed. R. Civ. P. 42(a); *see also Yanek v. Staar Surgical Co.*, 2004 WL 5574358, at
10 **3-4 (C.D.Cal. 2004) (consolidating related actions because they "arise from, or
11 relate to, substantially the same facts and questions of law...").

12 Here, the Related Actions clearly involve common issues of law and fact, as
13 they each name similar if not identical defendants, state similar claims, and arise
14 from the same factual circumstances. Consolidation of the Related Actions is
15 necessary and appropriate and will serve to promote an efficient litigation by
16 expediting pretrial proceedings, avoiding duplication of effort, avoiding
17 harassment of parties and witnesses and minimizing the expenditure of time and
18 money by all persons concerned. Moreover, consolidation of the Related Actions
19 is warranted because each of these cases is dependent on proof of the same
20 questions of law and fact—specifically, whether the Individual Defendants
21 violated the federal securities laws by, *inter alia*, disseminating misleading
22 information and omitting material information in public disclosures. Hence, the
23 parties in each case will seek to review the same documents and depose the same
24 witnesses.

25 Given that the Related Actions are in their infancy, litigating these cases in
26 one consolidated fashion will conserve judicial resources and is the most efficient

1 method for adjudicating this controversy. *See Id.* (consolidating related actions
2 due largely to the fact that “these actions involve common question of law and fact,
3 [and] the same discovery and similar class certification issues will be relevant to all
4 related actions.”). Under these circumstances, consolidation is proper pursuant to
5 Fed. R. Civ. P. 42(a).

6 **B. Movant Should Be Appointed Lead Plaintiff**

7 **i. The Procedural Requirements Pursuant To The PSLRA**

8 The PSLRA sets forth a detailed procedure that governs the appointment of
9 a lead plaintiff or lead plaintiffs in each private action arising under the Exchange
10 Act that is brought as a plaintiff class action pursuant to the Federal Rules of Civil
11 Procedure. *See* 15 U.S.C. §78u-4(a)(1) and (a)(3)(B)(i). Specifically, the PSLRA
12 provides that, within 20 days after the date on which a class action is filed, the
13 plaintiff or plaintiffs who filed the initial complaint shall cause to be published, in
14 a widely circulated national business-oriented publication or wire service, a notice
15 advising members of the purported plaintiff class: (i) of the pendency of the action,
16 the claims asserted therein, and the purported class period; and, (ii) that not later
17 than 60 days after the date on which the notice is published, any member of the
18 purported class may move the court to serve as lead plaintiffs of the purported
19 class. 15 U.S.C. §78u-4(a)(3)(A)(i). Here, a notice was published on April 8, 2011
20 on *Globe Newswire*, advising class members of the pendency of the action. *See*
21 *Goldberg Decl.*, Exhibit A.

22 Furthermore, the PSLRA directs the Court to consider any motions by
23 plaintiffs or purported class members to serve as Lead Plaintiff in response to any
24 such notice within 60 days after the date of publication of the notice, or as soon as
25 practicable after the Court decides any pending motions to consolidate any actions
26 asserting substantially the same claim or claims. Under this section, the court

1 “shall” appoint the “most adequate plaintiff,” and is to presume that such plaintiff
2 is the person, or group of persons, which:

- 3 a. has either filed the complaint or made a motion in response to a
4 notice...
5 b. in the determination of the court, has the largest financial interest in the
6 relief sought by the class; and
7 c. otherwise satisfies the requirements of Rule 23 of the Federal Rules of
8 Civil Procedure. Section 21D (a)(3)(B)(iii)(I).

9 As discussed below, Movant has complied with the procedural prerequisites
10 of the PSLRA. Moreover, Movant believes that he has the largest combined
11 financial interest in the litigation, and otherwise meets the relevant requirements of
12 Rule 23.

13 **ii. Movant Is “The Most Adequate Plaintiff”**

14 **1. Movant’s Motion is Timely**

15 Under the deadlines established by the PSLRA, any class members
16 interested in moving for the appointment as Lead Plaintiff in this matter must do so
17 within 60 days of the date of publication of the notice of the first filed action, or
18 May 31, 2011. 15 U.S.C. §78u-4(a)(3)(A) and (B). Because this Motion is filed
19 within the requisite time frame after publication of the notice, Movant’s motion is
20 timely.

21 **2. Movant Has the Largest Financial Interest**

22 According to 15 U.S.C. § 78u-4(a)(3)(B)(iii) , the Court shall presume that
23 the most adequate plaintiff is the “person or group of persons” that represent(s) the
24 largest financial interest in the relief sought by the action and who also meets the
25 requirements of Rule 23. During the Class Period, as evidenced by, among other
26 things, the accompanying signed certification and loss charts (*see* Goldberg Decl.
27 Exhibits B and C), Mr. Lyons has incurred a total loss of \$1,305,275.54 on his

1 transactions in IntelliMedia securities. Movant believes that he has the largest
2 financial interest in the litigation and it satisfies all of the PSLRA's prerequisites
3 for appointment as Lead Plaintiff. 15 U.S.C. § 78u-4 (a)(3)(B); *see also*
4 *Stackhouse v. Toyota Motor Co.*, 2010 WL 3377409, at *2 (C.D.Cal. July 16,
5 2010) (the Court appointed as lead plaintiff the party with the largest alleged
6 losses); *Tanne v. Autobytel, Inc.*, 226 F.R.D. 659, 666 (C.D.Cal. 2005) ("the
7 Reform Act provides in categorical terms that the only basis on which a court may
8 compare plaintiffs competing to serve as lead is the size of their financial stake in
9 the controversy.") (internal citations omitted).

10 **3. Movant Otherwise Satisfies Rule 23**

11 In addition to possessing the largest financial interest in the outcome of the
12 litigation, a Lead Plaintiff must also "otherwise satisf[y] the requirements of Rule
13 23 of the Federal Rules of Civil Procedure" in order to be the presumptive most
14 adequate plaintiff. 15 U.S.C. §78u-4(a)(3)(B). To that end, Rule 23(a) provides
15 that a party may serve as a class representative only if the following four
16 requirements are satisfied: (1) the class is so numerous that joinder of all members
17 is impracticable; (2) there are questions of law or fact common to the class; (3) the
18 claims or defenses of the representative parties are typical of the claims or defenses
19 of the class; and (4) the representative parties will fairly and adequately protect the
20 interests of the class.

21 Of the four prerequisites to class certification, only two—typicality and
22 adequacy—are relevant in the Lead Plaintiff analysis. Consequently, in deciding
23 the motion to serve as Lead Plaintiff, the Court should limit its inquiry to the
24 typicality and adequacy prongs of Rule 23(a), and defer examination of the
25 remaining requirements until Lead Plaintiff moves for class certification. *See In re*
26 *Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002).

1 This interpretation is supported by the PSLRA, which provides that the most
2 adequate plaintiff presumption may be rebutted only by proof that a plaintiff “will
3 not fairly and adequately protect the interests of the class; or . . . is subject to
4 unique defenses that render such plaintiff incapable of adequately representing the
5 class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). Here, Movant satisfies both the
6 typicality and adequacy requirements of Rule 23, thereby justifying his
7 appointment as Lead Plaintiff.

8 **a. Movant’s Claims Are Typical of Class Claims**

9 Under Rule 23(a)(3), the claims or defenses of the representative parties
10 must be typical of those of the class. The typicality requirement of Rule 23(a) is
11 satisfied when a plaintiff has: (1) suffered the same injuries as the absent class
12 members (2) as a result of the same course of conduct by defendants; and (3)
13 plaintiff’s claims and the claims of the class are based on the same legal issues.
14 *See In re Surebeam Corp. Sec. Litig.*, 2004 WL 5159061, at *6 (S.D. Cal. 2004)
15 (“[typicality] mandates that the presumptive lead plaintiff’s claim arise from the
16 same event or course of conduct giving rise to the claims of other class members
17 and be based on the same legal theory.”) (internal quotations omitted).

18 Since the action seeks to prove that Defendants committed the same
19 unlawful acts in the same methods against an entire class, and all members of this
20 class have identical claims, the typicality requirement of Rule 23(a)(3) is satisfied.
21 *See id.* at *6, *citing Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985).
22 Movant seeks to represent a class of purchasers of IntelliMedia common stock that
23 have identical, non-competing, and non-conflicting interests, and satisfy the
24 typicality requirement because they: (a) purchased IntelliMedia shares during the
25 Class Period at prices alleged to have been artificially inflated by the false and
26 misleading statements issued by Defendants, and (b) were damaged by

Defendants' alleged violations of the federal securities laws. Movant's claims meet the typicality requirement since all the claims arise out of the same course of events, are based on the same legal theories, and questions of liability are common to all proposed class members. *See id.* at *6.

b. Movant Will Fairly and Adequately Protect the Interests of the Class

Rule 23(a) further requires that the class representative fairly and adequately represent the class. In determining whether a representative will fairly and adequately represent the class, courts assess: (i) whether the proposed Lead Plaintiff has interests that are not antagonistic to the class, (ii) whether the class representative has significant interest in the outcome of the case to ensure vigorous advocacy, and (iii) whether the representative party's counsel is qualified, experienced, and generally able to conduct the litigation. *See Surebeam*, 2004 WL 5159061, at *5, *citing In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litig.*, 122 F.R.D. 251, 257 (C.D. Cal. 1998).

Movant will more than adequately represent the interests of the class. First, Movant's interests are clearly aligned with the interests of the members of the proposed class, and there is no antagonism or conflict whatsoever between his respective interests and the interests of the class members. As detailed above, Movant shares substantially similar questions of law and fact with the members of the Class, and his claims are typical of the members of the Class. Second, Movant has amply demonstrated his adequacy as a class representative by signing a certification affirming his willingness to serve as and assume the responsibilities of Lead Plaintiff. *See Goldberg Decl., Exhibit B.* Furthermore, having suffered substantial losses as a result of Defendants' misrepresentations and/or omissions, Movant will be a zealous advocate on behalf of the class. Mr. Lyons has also

1 signed a Declaration attesting to and reaffirming his willingness to pursue the
2 action on behalf of the Class, as well as his understanding of, and commitment to,
3 fulfilling the role of Lead Plaintiff in the litigation. *See* Goldberg Decl., Exhibit E.
4 Finally, Movant's proposed Lead Counsel, Saxena White, is highly qualified and
5 has extensive experience in successfully prosecuting securities class actions, as
6 discussed *infra*. *See* Goldberg Decl., Exhibit D.

7 Thus, the close alignment of interests between Movant and the other class
8 members, and his strong desire to prosecute this action on behalf of the class,
9 provide ample justification to appoint Movant as Lead Plaintiff in this litigation.
10 Accordingly, Mr. Lyons satisfies the typicality and adequacy requirements of Rule
11 23 for the purposes of this motion and should be appointed as Lead Plaintiff.

12 **C. Movant's Choice of Lead and Local Counsel Should Be Approved**

13 Pursuant to the PSLRA, a Lead Plaintiff shall, subject to Court approval,
14 select and retain counsel to represent the class. 15 U.S.C. §78u-4(a)(3)(B)(v).
15 Moreover, the Court should not disturb a Lead Plaintiff's choice of counsel unless
16 "necessary to protect the interests of the plaintiff class." *See* Statement of
17 Managers—The "Private Securities Litigation Reform Act of 1995," 141 Cong.
18 Rec. H14691-08, at H13700 (daily ed. Nov. 28, 1995); *see also In re Cavanaugh*,
19 306 F.3d 726, 732-733 (9th Cir. Cal. 2002) (The court should honor the Lead
20 Plaintiff's selection of counsel except in extreme circumstances, where the
21 selection of counsel appears "irrational" or is otherwise clearly against the interests
22 of the class members). Lead Counsel is responsible for "formulating . . . and
23 presenting positions on substantive and procedural issues during the litigation."
24 Manual for Complex Litigation (Fourth) § 10.221 (2005). Lead Counsel would
25 also be responsible for appearing before the court, conducting discovery, working
26 with opposing counsel, and performing all aspects of the litigation. *Id.*

1 Movant has selected the law firm of Saxena White to serve as Lead Counsel
2 to pursue this litigation on his behalf and on behalf of the Class. Saxena White
3 possesses extensive experience litigating securities class actions and has
4 successfully prosecuted numerous securities fraud class actions on behalf of
5 injured investors. As demonstrated by its firm resume, Saxena White has been
6 appointed as Lead or Co-Lead Counsel in landmark, precedent-setting class
7 actions. *See* Goldberg Decl., Exhibit D.

8 Saxena White is a well-established, nationwide firm with an extensive and
9 impressive track record of prosecuting complex litigation. With offices in Florida,
10 Massachusetts, and Montana, and with attorneys that are members of the California
11 Bar and this Court, Saxena White is well-positioned to handle complex shareholder
12 litigation across the country. In litigating securities class actions, shareholder
13 derivative actions, breach of fiduciary duty class actions, merger & acquisition
14 challenges and consumer class actions, Saxena White has repeatedly demonstrated
15 an ability to provide plaintiffs with superior representation as Lead Counsel. The
16 firm's considerable efforts have led to groundbreaking settlements and judgments
17 resulting in a collective recovery in the hundreds of millions of dollars. Courts
18 throughout the country have recognized that Saxena White has the experience and
19 resources to successfully and efficiently prosecute complex class and derivative
20 actions as Lead Counsel.

21 For instance, acting as sole Class Counsel in a securities fraud action against
22 SIRVA, Inc., Saxena White gained final approval from the Northern District of
23 Illinois of a \$53.3 million settlement for shareholders. *See Central Laborers'*
24 *Pension Fund v. SIRVA, Inc., et. al.*, No. 04 CV-07644 (N.D. Ill. November 2,
25 2007). In addition to the monetary component of the settlement, SIRVA made
26 significant reforms to its internal controls policies, including discarding the SIRVA

1 Board of Directors plurality standard for director elections, and strengthening
2 requirements regarding director attendance at shareholder meetings. The
3 development and implementation of these reforms (which the company recognized
4 was a main result of the litigation) was truly a testament to the negotiating and
5 litigation acumen that Saxena White demonstrated during the course of this
6 complex action.

7 Further, the Honorable William S. Duffey, Jr. of the Northern District of
8 Georgia, also noted that Saxena White's lawyers act with "dignity and respect,"
9 produce "well-done pleadings," are "thorough [and] insightful," and "fight[] as
10 hard but as honestly and professionally as they can for the interest of their clients."
11 *In re Freidman's Sec. Litig.*, 1:03-CV-3475-WSD (N.D. Ga. Feb. 5, 2009).
12 Similarly, the Honorable Judge Jed S. Rakoff, a noted Judge of the Southern
13 District of New York, recognized that Saxena White had performed "excellent
14 work" in this "important case" on behalf of Merrill Lynch and its shareholders
15 worldwide. *In re Merrill Lynch & Co., Inc. Securities, Derivative and ERISA*
16 *Litig.*, 4:07 Civ. 9633 (JSR) (S.D.N.Y. Jan. 20, 2009).

17 In approving the settlement in *Klien v. FPL Group, Inc.*, United States
18 District Court Judge Alan S. Gold recognized that the action presented "complex
19 and novel legal issues...[where] the likelihood of success for Plaintiffs at the outset
20 of the case was very low." In approving the exceptional settlement that was
21 eventually reached after years of hard fought litigation, Judge Gold stated:

22 Plaintiffs' counsel, a highly experienced group of lawyers with
23 national reputations in large securities class actions, recovered an
24 unprecedented amount of money for shareholders as a result of this
settlement - \$22.25 million in addition to sweeping corporate
governance changes which FPL Group has agreed to implement.

25 ⁵ *Klien v. FPL Group, Inc.*, Case No. 02-20170-civ-Gold (S.D. Fla. Nov. 23, 2004)
26 (Order and Final Judgment of Dismissal at 9).

1 In terms of derivative litigation, Saxena White is also currently serving as
2 Co-Lead Counsel in several of the most significant derivative cases in the nation.
3 For instance, *In re Bank of America Corp. Securities, Derivative and ERISA*
4 *Litigation*, No. 09-MD-2058 (S.D.N.Y.), the firm was appointed as Co-Lead
5 Counsel from amongst numerous firms, with Judge Chin expressly noting that
6 **Saxena White is “experienced and qualified to serve as lead counsel.”** Similarly,
7 in *In re Goldman Sachs Group, Inc. Derivative Litigation*, Master File No. 10 Civ.
8 3614-PAC (S.D.N.Y.), Judge Crotty appointed Saxena White as Lead Counsel, and
9 specifically mentioned that **“Saxena White is well qualified to play its role as lead**
10 **counsel. The pleadings it filed in this matter, including the motion papers, are**
11 **competent and professional.”** Saxena White also served as Co-Lead Counsel in
12 another noteworthy derivative action, *Lee P. Rosky v. Todd S. Farha, et al.*, No.
13 8:07-cv-1952-VMC-MAP (Consolidated) (M.D.Fla. Filed Nov. 7, 2007), involving
14 claims against WellCare Health Care Plans, Inc.

15 Additionally, Mr. Lyons has selected GB&G to serve as Local Counsel.
16 GB&G has extensive experience prosecuting complex litigation, including
17 securities fraud class actions, and will serve to facilitate the litigation on a local
18 level. Moreover, Saxena White and GB&G have in the past worked effectively to
19 successfully prosecute a similar securities shareholder class action.⁶ Accordingly,
20 Mr. Lyons should be appointed as Lead Plaintiff and the Court should approve of
21 its selection of Saxena White as Lead Counsel and GB&G as Local Counsel.
22
23
24

25 ⁶ See *In re Atricare, Inc. Securities Litigation*, C.A. No. 1:08-cv-00867
26 (S.D.Oh.)(Oct. 13, 2010) (Order and Final Judgment approving \$2.75 million class
settlement where Saxena White and GB&G served as co-lead counsel).

1 **V. CONCLUSION**

2 For the foregoing reasons, Movant respectfully requests that this Court: (1)
3 consolidate the above-captioned Related Actions, (2) appoint Movant as Lead
4 Plaintiff of the consolidated action, and (3) approve of Movant's selections of
5 Saxena White as Lead Counsel and GB&G as Local Counsel.

6 Dated: May 31, 2011

By: 

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